IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.310 OF 2007

Mr Dharmaji Sudam Mokal, .. Petitioner

Vs

M/s Parsampuria Plantation Ltd & Ors. Respondents.

Mr Shirish Gupte, senior counsel, i/b Mr Subodh Desai, for the petitioner.

Mr A.H.Ponda i/b Mr P. Parsurampuria, for respondent no.1.

Ms U.V.Kejariwal, APP for the respondent-State.

CORAM : SMT.RANJANA DESAI & D.B.BHOSALE,JJ.

DATED : 17TH JULY, 2007

P.C.:

1. The petitioner has impugned the order dated 12.1.2007 passed by the learned Additional Sessions Judge, Mumbai in Misc. Application No.1 of 2007 in Special Case No.16 of 2005, by which the said application has been allowed. The Misc.Application No.1 of 2007 was filed by respondent no.1 with the following prayers :

> (a) that pending hearing and final disposal of the present MISC.Application, prohibitory order be issued restraining the original Sellers from selling, transferring, disposing off or creating third party right on the lands as mentioned in Exhibit-B.
>
> (b) that pending hearing and final disposal of the present Misc.Application, the respondent nos 2 to 6 be restrained from in any manner

> acknowledging and/or endorsing any entries either to sale, transfer and/or mortgaged in their original records in respect of piece of land as more particularly set out in Exhibit-B.

The operative part of the impugned order reads thus:

> "1. Respondent Nos.2,3,4,5 and 6 are directed not to effect any sale of lands of which Agreement of sale is made with Applicants/Accused Parasrampuria Plantations Limited and possession is handed over to Applicants/Accused Parasrampuria Plantations Limited by executing kabjepavti in favour of Applicants/Accused Plantations Limited.
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> 2. The State of Maharashtra - Respondent No.1 is directed to attach the land of which Sale Deed Agreement of Sale is made with Parasrampuria Plantation Limited and possession of land is handed over to Parasrampuria Plantation Company by executing kabjepavti.
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> 3. Further Applicants/Accused Parasrampuria Plantation Limited are directed to give specific limits of land, Survey No. name of landlord area of the land and kabjepavti to the police for enabling them to take immediate action. Upon receiving such information from the Applicants/Accused Parasrampuria Plantation Limited the Respondent no. 1 should take diligent steps to attach lands.
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> 4. Misc.Application of the Applicants/Accused Parasrampuria Plantation Company is disposed of with the above said directions."

2. Feeling aggrieved by the aforesaid order, the petitioner has filed the instant criminal writ petition mainly on the following grounds : (i) By the impugned order the petitioner, who is one of the land owners and whose land is directed to be attached, was

not a party to the application and hence no opportunity of being heard was granted to him; (ii) the impugned order is without jurisdiction since there is no provision in the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, (for short, "MPID Act") allowing the accused to make an application for the prayers quoted in the first paragraph or empowering the Court to pass such order; and (iii) in view of the order of the Supreme Court dated 18.11.2005 passed in a group of Special Leave Appeals the Designated Court ought not to have entertained the application filed by respondent no.1.

3. It appears that the constitutional validity of the MPID Act was under challenge in a group of writ petitions before this Court. This Court disposed of the said group declaring the MPID Act as ultra vires. That judgment was carried in appeal to the Supreme Court by the State. The Supreme Court while issuing notice and making it returnable within a period of four weeks, on 18.11.2005 passed the following order:

"Heard both sides.

> In view of the amount involved in the various transactions and the number of prosecutions launched under the provisions of Maharashtra Protection of Interest of depositors (In Financial Establishments) Act, 1999, we grant interim stay in the following manner:
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> In cases where investigations are in progress the prosecuting agency shall continue with the investigation. But there shall not be further prosecutions of the accused persons and as regards pending cases the status quo as on today shall be maintained. It is submitted that in 9 cases already accused persons have been convicted and the convicted persons have been at liberty to apply for bail and the Court would be at liberty to pass order granting bail. The interim attachment granted by the competent authority shall subsist until further orders. However, in cases where applications of release of attachment have been filed the same should be disposed of in accordance with law by separate orders. There shall not be sale of attached properties. The Authorities shall not take any coercive steps to recover the amount under the Act.
>
> Issue notice in IA Nos 6-10 returnable within a period of four weeks.
>
> Delay condoned.
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> Permission granted for filing appeals. Appeals are admitted.
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> Counter affidavit shall be filed within four weeks.
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> The convicted and the undertrials be released on bail."

4. We are informed that though the notice was made returnable within a period of four weeks, till

this date the appeals have not come up for further hearing before the Supreme Court. From bare perusal of the aforesaid interim order passed by the Supreme Court, it is clear that as regards pending cases under the MPID Act, status-quo as on the date of passing the order has to be maintained. Against this backdrop the arguments advanced by the learned counsel for the petitioner, in our opinion, require consideration. In the circumstances, we issue Rule. By way of interim order we direct the parties to maintain status-quo as on the date of the order passed by the Supreme Court, that is, 18.11.2005. Liberty to the parties to apply in the event any further order is passed by the Supreme Court. It is needless to express that in view of the order of status-quo, further proceedings which are likely to be initiated by the Government for attachment of the properties shall remain stayed. The petitioner and all other similarly placed persons interested, who are covered by the impugned order, shall not sell the lands, in respect of which agreements to sell in favour of respondent no.1 have been executed, without permission of this Court. Liberty to all such persons to apply for intervention.

(**D.B.BHOSALE,J.**) (**SMT.RANJANA DESAI, J.**)